IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.MC.No. 3094 of 2004()

OS.964/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD

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PETITIONER:

NARAYANA KURUP, S/O.PARAMESWARA KURUP,
BIJU BHAVAN, MANAKKODE, PAZHAKUTTY,
NEDUMANGAD.

BY ADV. SRI.V.G.ARUN

RESPONDENTS: COMPLAINANT AND STATE:

1. BHASKARAN NAIR, R/A,. SUKUMARA VILASOM, MANAKKODE, PAZHAKUTTY P.O. NEDUMANGAD.

2. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.SATHEESH KUMAR
SRI.T.A.UNNIKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

CRL.M.C.No.3094 OF 2004

Dated this the 10th day of July, 2007

O R D E R

This petition is filed to quash Annexure-1 complaint as against the petitioner and all further proceedings initiated pursuant to the complaint in C.C.No.268/2000 on the file of the Judicial First Class Magistrate II, Nedumangad.

2. According to the counsel appearing for the petitioner, the complaint does not even make out a prima facie case and the learned Magistrate went wrong in taking cognizance on the basis of the complaint. It is also submitted that the complainant had already lodged the same complaint before the Nedumangad Police and on investigation, it was found to be false. The present complaint was forwarded to the police under Section 156(3) of the Crl.P.C. and it is found as false by the police. Therefore, the court below went wrong in taking cognizance.

3. Learned counsel for the petitioner argued that even in the civil suit filed by the complainant as O.S.No.964/97, the complainant failed to prove the alleged trespass and therefore, the present complaint is frivolous.

According to the petitioner, the property which is alleged to have been trespassed upon by the petitioner, was not in possession of the complainant as on the date of the alleged trespass and hence no trespass is involved.

4. On going through Annexure-1 complaint, it is clear that allegations are made and that the complainant is in possession of 15 cents of property in which a building is situated where the complainant is residing with his family. It is also alleged that the accused forming an unlawful assembly with the common object of trespassing into the property committing mischief and also criminal intimidation, trespassed into the property of the complainant on 21/12/1997 at about 10.30 a.m. and cut a tree and caused a loss of Rs.1,000/- to the complainant and also committed criminal intimidation, when the complainant attempted to prevent that act. The 2nd respondent was armed with deadly weapons at that time. On going through the allegations in the complaint, it cannot be said that the complaint does not contain allegations constituting offence. Allegations in the complaint make out offences under the Indian Penal Code and there is nothing on record to show that such offences are not committed. The argument raised to the effect that the complainant was not in possession of the property as on the date of the alleged trespass is not supported by any documents. So also the fact that the civil court has entered a finding that there is no trespass is also not based on any

evidence. In the above circumstances, I do not find any ground to quash the complaint invoking Section 482 of the Code of Criminal Procedure.

Petition is dismissed.

K.HEMA,
Judge.

kcv.